

JUDITH TRACY

VS.

Respondent

AND

Insurance Carrier

ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant testified she injured her back while working for the respondent on February 3, 1997. There were no witnesses. By deposition, Sam Sipes, claimant's former

boyfriend, testified that claimant did not hurt her back while working for the respondent but, instead, by lifting wet laundry at home the day before the alleged work-related incident.

Both claimant and Mr. Sipes have credibility problems. Claimant admits wrongfully taking her children's prescription medication for her personal recreational use. On the other hand, Mr. Sipes has reason to seek revenge against claimant as she recently reported him to the authorities which resulted in numerous burglary convictions against him.

The Administrative Law Judge had the opportunity to observe claimant testify and, therefore, form an impression of claimant's credibility. In this instance, the Appeals Board gives some deference to that impression. Based upon the present record, claimant has established by the narrowest of margins that she injured her back on February 3, 1997, as the result of a work-related accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated September 17, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

c: Paul D. Leader, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director